In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1269

GUIDO IOZZI, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the District of Maryland, petitioner, at that time the President of the Baltimore Building and Construction Trade Council, was convicted on six counts charging violations of the Hobbs Act (18 U.S.C. 1951) and Taft-Hartley Act (29 U.S.C. 186) arising from his wrongful use of fear of financial injury, instilled by threats of force and violence, directed against various building contractors to obtain or attempt to obtain money from them. He was

sentenced to fifteen years' imprisonment. The court of appeals affirmed (Pet. App. i-vii), and thereafter denied a petition for rehearing with a further opinion (Pet. App. viii-ix).

Petitioner contends, *inter alia*, that the use of reputation evidence to show the reasonableness of the contractors' fear was prejudicial and that there was a fatal variance, as regards the Hobbs Act counts, between the indictment and proof. He asserts that the evidence showed that he created fear of economic loss by force and violence, whereas the statute makes the use of force and violence an independent means of violating the Act, which was not alleged in the indictment. These contentions are without substance, since the government is required to show that the victim's fear is reasonable, as to which evidence of the reasons for the fear is clearly relevant. Petitioner's claims in this regard are fully considered and amply answered in the initial opinion of the court below (see Pet. App. i-vii), on which we here rely.[1]

Petitioner also contends that, in view of the provisions of 47 U.S.C. 605, the district court improperly admitted tape recordings made of certain of his tele-

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[1] It should be noted that, although it is a truism that a defendant cannot be convicted on reputation evidence alone (*Michelson* v. *United States*, 335 U.S. 469, 475), such evidence has obvious pertinence in a case such as this where it tends to support a showing of fear on the part of the victim. See *United States* v. *Tropiano*, 418 F. 2d 1069, 1081 (C.A. 2), petitions for writs of certiorari pending, Nos. 1101, 1224, this Term. *Stirone* v. *United States*, 361 U.S. 212, on which petitioner seeks to rely (Pet. 17-21), is inapposite, for the reasons discussed by the court below (see Pet. App. vii).

phone conversations with an officer of one of the construction companies, which were made by federal agents with the consent of the other party to the conversation. Petitioner argues that the consent of one party to a telephone conversation does not prevent a recording thereof from constituting a prohibited "interception" of the conversation for purposes of the Communications Act. The authorities, however, are uniformly to the contrary. *United States* v. *McGuire*, 381 F. 2d 306, 314 (C.A. 2), certiorari denied, 389 U.S. 1053; *Battaglia* v. *United States*, 349 F. 2d 556, 559 (C.A. 9), certiorari denied, 382 U.S. 955; *Carnes* v. *United States*, 295 F. 2d 598 (C.A. 5), certiorari denied, 369 U.S. 861; see also *Rathbun* v. *United States*, 355 U.S. 107, 110. Petitioner's reliance on *Lee* v. *Florida*, 392 U.S. 378, involving a party-line telephone, is not well grounded, since in that case there was no consent to the recording.

Petitioner also urges that the admission of the tapes was erroneous because Maryland law allegedly prohibits the recording of telephone conversations unless both parties thereto concur. See *Robert* v. *State*, 220 Md. 159, 168-171, 151 A. 2d 737, 741-743 (Ct. App. Md.); but see *Clark* v. *State*, 2 Md. App. 756, 237 A. 2d 768 (Ct. Spec. App. Md.). Assuming that Maryland law was violated, that did not render the evidence inadmissible. The admissibility of the tapes was a matter governed by federal law. *United States* v. *Martin*, 372 F. 2d 63, 66 (C.A. 7), certiorari denied, 387 U.S. 919; *United States* v. *McGuire*, *supra*, 381 F. 2d at 315; see also *Elkins* v. *United States*, 364 U.S. 206; *Wolfle* v. *United States*, 291 U.S. 7, 12-13.

As noted, federal law was not infringed by the actions of the agents in recording the conversations. Petitioner's claim that the holding below involves a resurrection of the "silver platter" doctrine (Pet. 22) is thus wide of the mark.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1970.

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